

THE FORMS ARE COMING! THE FORMS ARE COMING!*

***along with some rules**

Disclaimer: The views expressed in these materials and by the participants do not necessarily represent the views of the Advisory Committee on Bankruptcy Rules or any other committees of the Judicial Conference of the United States.

“Emergency! Everybody to get from street!”

AGENDA

1. Background on bankruptcy rules and forms amendment process & forms modernization project
2. New bankruptcy forms to take effect December 1, 2015
 - New numbering system; new instruction booklets
 - Closer look at a few new forms, including new Schedule C
 - Transition issues; advice for completing forms
3. Civil rules amendments to take effect December 1, 2015
4. Update on proposed national form Chapter 13 plan

BACKGROUND ON RULES AND FORMS PROCESS

- Rulemaking process governed by Rules Enabling Act and procedures for the Judicial Conference's Committee on Rules of Practice (Standing Committee) and its five Advisory Rules Committees, including Bankruptcy Rules Advisory Committee
- Rules Enabling Act authorizes Supreme Court to prescribe general rules of practice and procedure and rules of evidence

BACKGROUND ON RULES AND FORMS PROCESS

- Under Act, work and oversight of rulemaking process delegated by Supreme Court to the Judicial Conference and its committees
- Standing Committee and its five advisory committees “carry on a continuous study of the operation and effect” of the federal rules

MORE BACKGROUND ON RULES AND FORMS PROCESS

- STEP 1:
- Initial consideration by the Bankruptcy Rules Advisory Committee
 - Making suggestions for changes: **THIS MEANS YOU**
 - Consideration of suggestions
 - Drafting proposed rules changes

STEP 2: Publication and Public Comment: 6 months

STEP 3: Consideration of Public Comments and Final Approval by Bankruptcy Rules Advisory Committee: 1-2 months after comment period

YET MORE BACKGROUND ON RULES AND FORMS PROCESS

STEP 4: Approval by the Standing Committee: June

STEP 5: Judicial Conference Approval: September

STEP 6: Supreme Court Review and Approval: it must transmit proposed amendments to Congress by May 1 of the year in which the amendment is to take effect

STEP 7: Congressional Review: at least 7 months to act on rules prescribed by Supreme Court. Absent legislation to reject, modify or defer, new rules take effect as a matter of law on December 1.

I PROMISE: FINAL BACKGROUND ON RULES AND FORMS PROCESS

- Duration of process for New Rules: 2-3 years
- New Rules always effective on December 1
- New Forms process more streamlined and quicker:
 - Development and approval by Bankruptcy Rules Advisory Committee with public comment, approval by Standing Rules Committee and Judicial Conference
 - Official Forms
 - Director's forms

FORMS MODERNIZATION PROJECT


- Project began in 2008
- Goals:
 - Easier for debtors to understand and complete
 - Produce more accurate and complete responses
- Designed to work with scheduled enhancements to court's case management system (captures responses as data)
- Long vetting process: forms consultant; input from practitioners; trustees; software vendors; testing with law clerks and others; public comment period


SOME FORMS ALREADY IN EFFECT (JUST BEING RENUMBERED)

- Schedules I and J
- Form 3A – Fee Installment Application
- Form 3B – Fee Waiver Application
- Forms 22A-1, 22A-2, 22B, 22C-1, 22C-2 – Means Test Forms

MODERNIZED SCHEDULES I AND J

5. List all payroll deductions:

- 
- 5a. Tax, Medicare, and Social Security deductions
- 5b. Mandatory contributions for retirement plans
- 5c. Voluntary contributions for retirement plans
- 5d. Required repayments of retirement fund loans
- 5e. Insurance
- 5f. Domestic support obligations
- 5g. Union dues
- 5h. Other deductions. Specify: _____

- 
- | | | |
|-----|-----------|-----------|
| 5a. | \$ _____ | \$ _____ |
| 5b. | \$ _____ | \$ _____ |
| 5c. | \$ _____ | \$ _____ |
| 5d. | \$ _____ | \$ _____ |
| 5e. | \$ _____ | \$ _____ |
| 5f. | \$ _____ | \$ _____ |
| 5g. | \$ _____ | \$ _____ |
| 5h. | +\$ _____ | +\$ _____ |

6. Add the payroll deductions. Add lines 5a + 5b + 5c + 5d + 5e + 5f + 5g + 5h.

6. \$ _____

7. Calculate total monthly take-home pay. Subtract line 6 from line 4.

7. \$ _____

In-line numbering aids reading and accuracy

RENUMBERING

100's – Case opening forms for individual debtors

200's – Case opening forms for non-individual debtors

300's – Court notices and orders

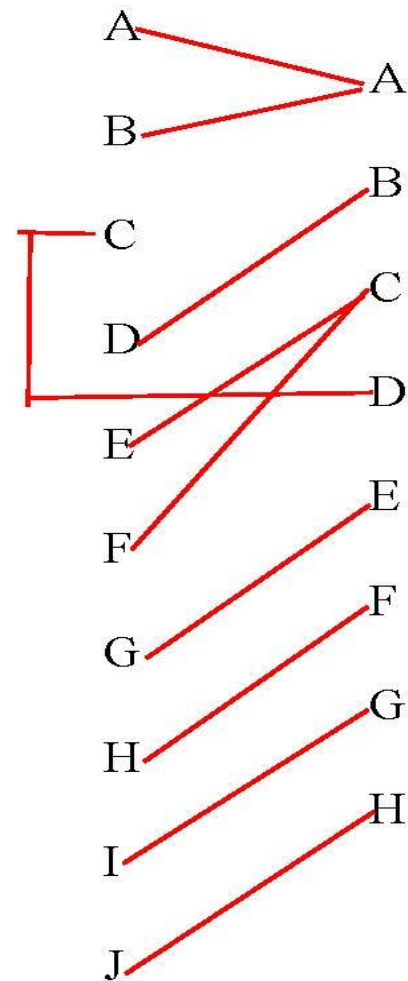
400's – Later-filed documents, including proof of claim

****SEE FORMS NUMBERS CONVERSION CHART****

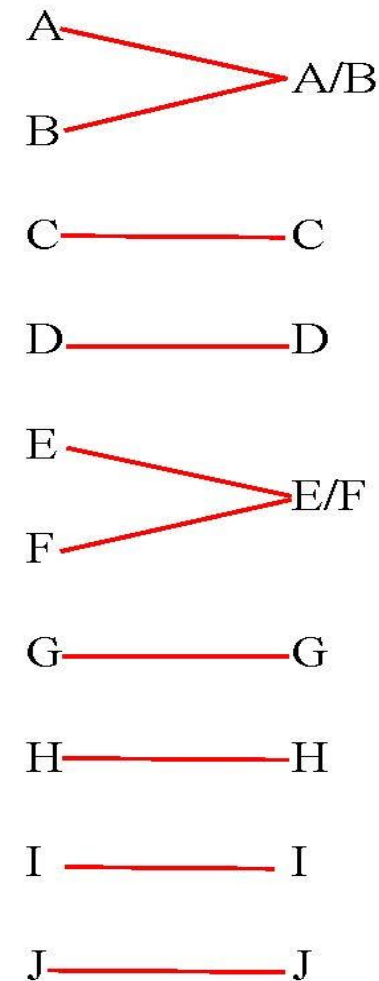
<http://www.uscourts.gov/rules-policies/pending-rules-amendments/pending-changes-bankruptcy-forms>

RELETTERING OF SCHEDULES (FORMS 106A-J)

Existing Schedules Forms Mod Proposal



Existing Schedules Alternative Proposal



NEW INSTRUCTION BOOKLETS

For individual debtors (44 pages)

For non-individual debtors (18 pages)

- Includes general instructions, form specific instructions, and glossary
- Should help debtors understand what is being asked
- Not intended to encourage *pro se* filers; a lot of warnings about the consequences for false information

A CLOSER LOOK AT A FEW OF THE NEW FORMS, INCLUDING NEW SCHEDULE C

- Rules Committee's response to Supreme Court's decision in *Schwab v. Reilly*, 560 U.S. 770 (2010)
-

AMOUNT OF THE EXEMPTION YOU CLAIM

CHECK ONLY ONE BOX FOR EACH EXEMPTION.

- ☐ \$ _____
- ☐ 100% OF FAIR MARKET VALUE, UP TO ANY
APPLICABLE STATUTORY LIMIT

STATEMENT OF FINANCIAL AFFAIRS

4. **Did you have any income from employment or from operating a business during this year or the two previous calendar years?**

Fill in the total amount of income you received from all jobs and all businesses, including part-time activities.

If you are filing a joint case and you have income that you receive together, list it only once under Debtor 1.

- ☐ No
- ☐ Yes. Fill in the details.

	Debtor 1		Debtor 2	
	Sources of income Check all that apply.	Gross income (before deductions and exclusions)	Sources of income Check all that apply.	Gross income (before deductions and exclusions)
From January 1 of current year until the date you filed for bankruptcy:	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____
For last calendar year: (January 1 to December 31, _____) YYYY	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____
For the calendar year before that: (January 1 to December 31, _____) YYYY	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____	<input type="checkbox"/> Wages, commissions, bonuses, tips <input type="checkbox"/> Operating a business	\$ _____

SOMETHING OLD; SOMETHING NEW

NOTICE OF APPEAL – EXISTING FORM 17A; NEW FORM 417A

Official Form 417A (12/15)

[Caption as in Form 416A, 416B, or 416D, as appropriate]

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- ☐ Plaintiff
☐ Defendant
☐ Other (describe) _____

For appeals in a bankruptcy case and not in an adversary proceeding.

- ☐ Debtor
☐ Creditor
☐ Trustee
☐ Other (describe) _____

MORTGAGE PROOF OF CLAIM ATTACHMENT – FORM 410A

(12/15)

If you file a claim secured by a security interest in the debtor's principal residence, you must use this form as an attachment to your proof of claim. See separate instructions.

Part 1: Mortgage and Case Information	Part 2: Total Debt Calculation	Part 3: Arrearage as of Date of the Petition	Part 4: Monthly Mortgage Payment
Case number: _____	Principal balance: _____	Principal & interest due: _____	Principal & interest: _____
Debtor 1: _____	Interest due: _____	Prepetition fees due: _____	Monthly escrow: _____
Debtor 2: _____	Fees, costs due: _____	Escrow deficiency for funds advanced: _____	Private mortgage insurance: _____
Last 4 digits to identify: ____ _	Escrow deficiency for funds advanced: _____	Projected escrow shortage: _____	Total monthly payment: _____
Creditor: _____	Less total funds on hand: - _____	Less funds on hand: - _____	
Servicer: _____	Total debt: _____	Total prepetition arrearage: _____	
Fixed accrual/daily simple interest/other: _____			

Part 5 : Loan Payment History from First Date of Default

[illegible]

TRANSITION ISSUES/ADVICE FOR COMPLETING FORMS

- Don't delay; contact your software provider immediately to be ready to go on December 1, 2015
- New forms will apply to all cases filed on or after December 1, 2015
- All practitioners and *pro se* parties will be expected to use new forms in new cases starting on Day 1 – December 1, 2015

TRANSITION ISSUES/ADVICE FOR COMPLETING FORMS

- New forms will apply to all cases pending on December 1, 2015, “to the extent just and practicable”
- Rule 5005 – Clerk shall not refuse to accept documents for filing solely because they are not in proper form as required by national or local rules
 - Per 1993 Committee Note: “The enforcement of these rules and local rules is a role for a judge.”

TRANSITION ISSUES/ADVICE FOR COMPLETING FORMS

- In a nutshell, there may be consequences if deficiencies are not corrected in a timely manner

TRANSITION ISSUES/ADVICE FOR COMPLETING FORMS

- Don't assume the questions on the new forms are the same as the old forms
- Read the questions
- Read the instructions

TRANSITION ISSUES/ADVICE FOR COMPLETING FORMS

- Answer each question fully
- Share the actual forms and instructions with the client
- Emphasize the need to disclose all assets and claims, including contingent claims

CIVIL RULES AMENDMENTS SET TO TAKE EFFECT ON DECEMBER 1, 2015

- Civil Rules 1, 4, 16, 26, 30, 31, 33, 34, 37, and 55, and abrogation of Rule 84 and the appendix of forms
- Many of these rules are incorporated into Part VII of the Bankruptcy Rules

CIVIL RULES AMENDMENTS SET TO TAKE EFFECT ON DECEMBER 1, 2015

- Some significant changes include:
 - Rule 4(m) – 90 days to perfect service instead of 120 days;
subject to dismissal if not served timely
 - Rule 26 – Scope of discovery; need for proportionality
 - Rule 37(e) – Failure to preserve electronically stored information
 - Rule 84 – Abrogate civil forms; bare-bones notice pleading
may no longer be sufficient after Iqbal and Twombly

CIVIL RULES AMENDMENTS SET TO TAKE EFFECT ON DECEMBER 1, 2015

- Commend you to the extensive committee notes
- Stemming from Duke Conference on Civil Litigation in May 2010 to explore costs of civil litigation and discuss possible solutions
- Goals:
 - Cooperation
 - Proportionality
 - Early, hands on case management by the judge

CIVIL RULES AMENDMENTS SET TO TAKE EFFECT ON DECEMBER 1, 2015

RULE 55. DEFAULT; DEFAULT JUDGMENT

(C) Setting aside a default or a default judgment. The Court may set aside an entry on default for good cause, and it may set aside a final default judgment under Rule 60(B).

CIVIL RULES AMENDMENTS SET TO TAKE EFFECT ON DECEMBER 1, 2015

2015 COMMITTEE NOTE

“Until final judgment is entered, Rule 54(B) allows revision of the default judgment at any time. The demanding standards set by Rule 60(B) apply only in seeking relief from a final judgment.”

CHAPTER 13 PLAN FORM UPDATE

- Started as suggestion from two groups in late 2010 & early 2011, partly in response to *Espinosa*
- Can we have a plan form where everything is in the same order & special provisions that vary from the plan form are in one section at the end of the plan?
- Chapter 13 plan working group, included Chapter 13 trustees and attorneys for debtors and creditors; mini conference in Chicago in January 2013

MORE CHAPTER 13 PLAN FORM UPDATE

- Aug. 2013 – Published proposed plan form and related rules changes for public comment
- Aug. 2014 – Republished revised version of proposed plan form and related rules changes
- Jan. 2015 – Heard testimony for and against proposed plan form and related rules changes

YET MORE CHAPTER 13 PLAN FORM UPDATE

- April 2015 – Committee unanimously agreed to consider further a concept that would include a national plan form and related rules, but would allow districts to opt out of using the official form if certain conditions were met
- Forms subcommittee worked on language changes that addressed all the formal comments; solicited input from various constituencies
- Oct. 2015 – Bankruptcy Rules Committee gave tentative approval to plan form and rules changes, with exception of Rule 3015 and possible Rule 3015.1 that would set requirements for opting out with local plan forms

FINAL CHAPTER 13 PLAN FORM UPDATE, FOR NOW

- Will continue to work to build a consensus among as many constituencies as we can
- Will decide whether there is a need to republish at our April 2016 meeting
- If we decide not to republish, earliest effective date for plan form and related rules changes would be December 1, 2017

See Chapter 13 addendum materials for Oct. 2015 meeting of
Bankruptcy Rules Committee

<http://www.uscourts.gov/file/18428/download>

STATUS OF OUR DISTRICT-WIDE CHAPTER 13 PLAN FORM

Judges have decided that, because the national plan form remains in flux and is several years off from being adopted, we are not going to rush to change the status quo

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BE READY – ONLY 32 DAYS UNTIL DECEMBER 1!





And now for something
you'll really like!

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